

POLICY REPORT



Workers'
Compensation
Board

Commission
des accidents
du travail

March 1989
Vol. 2 No. 1

EMPLOYER REPORTING OBLIGATIONS AND PENALTIES

The worker's compensation system provides "no-fault" industrial accident insurance to employers and workers. The system is totally financed by money paid into the accident fund by Ontario employers, who are assessed according to the nature of their business and total annual payroll. A lack of adequate and timely funding could adversely affect the administration of the system and payment of compensation claims. Therefore, it is essential that employers meet their legal obligations to fund the system in accordance with current legislation.

To encourage accurate and timely reporting, provisions of the Act authorize the Board to levy penalties against employers for non-compliance with their statutory obligations.

A review by the Operational Policy Branch has resulted in proposals to modify current policies and practices.

These modifications are designed to promote awareness, and encourage employers to meet their reporting obligations. Copies of a discussion paper have been distributed to a group of external stakeholders for their review and comment.

The proposed policy changes, along with submissions received from the WCB's external stakeholders, will be presented to the Board of Directors during the first quarter of 1989.

A summary of the employer reporting obligations and the sections of the Act pertinent to each obligation can be found on page 3.



WORKWELL, a WCB pilot project to assess health and safety conditions in the workplace is successfully underway. Throughout the initial phase of the project, the WORKWELL team will report to the Executive Director of the Policy and Program Development Department.

WORKWELL represents a merger of the section 91(4)* and section 91(6)** programs. Originally developed as separate initiatives, the WCB Board of Directors agreed that the two programs would be most effective as a joint pilot project providing financial incentives to employers for improving and promoting workplace health and safety. Firms with exemplary performance may be eligible to receive a rebate on their assessment rates, while firms with poor performance may face surcharges.

An information package outlining the program, and an overview of the criteria used in evaluating firms, has been mailed to all Schedule 1 employers.

Self nomination for the 1989 WORKWELL Award is by application to the Program Coordinator, using the form provided in the information pamphlet.

Due to an unforeseen delay in mailing, the deadline for submission of self-nomination forms has been extended to March 31, 1989.

Direct all inquiries to:

WORKWELL
Program Coordinator,
Workers' Compensation Board,
2 Bloor Street East,
22nd Floor,
Toronto, Ontario, M4W 3C3.
(416) 927-4349 or 927-4340

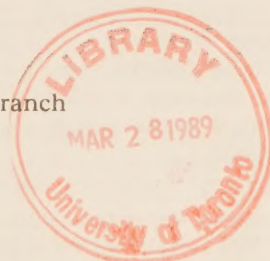
* "Target: Improving Workplace Health and Safety", Policy Report Vol. 1 No. 5, November 1988

** "Incentive System Launched", Policy Report Vol. 1 No. 6, December 1988

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Usha Kapoor, Manuals Distribution Specialist,
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Workers' Compensation Board, 22nd Floor
2 Bloor Street East
Toronto, Ontario, M4W 3C3
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ATTENDANT'S ALLOWANCE POLICY REVISED

POLICY STATEMENT

The Board will accept entitlement for an attendant's allowance when a worker sustains a degree of helplessness due to permanent total disability.

Section 52(1)(c) of the Workers' Compensation Act.

Note: Previously this policy was entitled "Attendance Allowance". It is now referred to as "Attendant's Allowance".

Currently, there are approximately 770 permanently totally disabled workers who require assistance in daily living. The attendant's allowance, which varies depending on workers' needs, provides funds for hiring attendants to supply in-home care and assistance.

Usually, the attendant's allowance is paid directly to the worker, who is then responsible for hiring an attendant. In many cases a family member, usually the spouse, acts as the attendant.

POLICY REPORT

Policy Report is published under the authority and direction of the Policy and Program Development Department of the Workers' Compensation Board. If there is any conflict between the statements contained in this publication and the Worker's Compensation Act and/or the Board approved policy documents, the Act or the approved document governs.

Comments or inquiries should be addressed to:

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Development Department,
Workers' Compensation Board,
2 Bloor Street East,
22nd Floor,
Toronto, Ontario, M4W 3C3.

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Concerns brought to the attention of the WCB have focused on two issues:

- 1) the method used to calculate attendant's allowances does not accurately reflect the actual cost of obtaining the attendant care required;
- 2) spouses acting as attendants are not covered as "workers" under the Act.

In response to these concerns, the Board of Directors has approved changes to the policy effective July 1, 1989.

Those workers who are permanently totally disabled and are awarded a 100% pension from the WCB will be reviewed for entitlement to an attendant's allowance. When the policy becomes effective in July, the Specialized Counselling Branch will begin to contact all workers currently receiving an allowance to review the worker's attendant needs. Once the current recipients have been contacted, the Branch will proceed to contact all those workers with a 100% pension to review their entitlement to an attendant's allowance.

POLICY CHANGE HIGHLIGHTS

Existing Policy

- Spouses who provide attendant care are not eligible for WCB benefits in the event of an injury.
- Workers are not required to register with the Board as an employer of an attendant.
- Allowance payments may be continued during periods of hospitalization for up to two months from the date of admission, at the discretion of the Board.
- Allowance is reviewed every three years.
- Attendance Allowance Classifications consist of seven categories. These classifications are based on the type of disability as opposed to the actual worker needs.

New Policy Effective July 1, 1989

- Attendants, including spouses, who provide care more than 24 hours per week will be covered and eligible for WCB benefits in the event of an injury.
- Workers who directly employ attendants 24 hours per week or more will be required to register as employers with the Board.*
- No change
- Allowances and the need for attendant care will be reviewed annually.
- An Activities of Daily Living Scale will be used to determine worker needs.**

* More information regarding registration procedures will be communicated to concerned parties in the near future.

** The Activities of Daily Living Scale, to be developed over the next few months, will provide a more objective and accurate means for the measurement of worker needs. This new scale will be developed from systems currently in use in clinical rehabilitative medicine. The attendant's allowance will be based on the number of hours of care, and the costs of providing such care.

(cont'd from page 1)

EMPLOYER REPORTING OBLIGATIONS AND PENALTIES IN ACCORDANCE WITH THE WORKERS' COMPENSATION ACT

OBLIGATION	PENALTIES
s. 97(2): Registering a new business when the first worker is hired.	97(6): Penalty levied for <ul style="list-style-type: none">● late submission of payroll● failure to register business
	110: Assessment due for years workers employed.
	115: Unregistered employer liable for full cost of claim in event of accident.
s. 97(1): Submitting accurate payroll statements on time each year.	97(6): Penalty levied for <ul style="list-style-type: none">● late submission of payroll● failure to keep accurate records.
	100: Employer to pay retroactive adjustments to assessments, and additional sum equal to difference in assessments.
	106(3): Employer to pay increased assessments when estimates considered too low.
97(3),(4): Maintaining accurate payroll records.	97(6): Penalty may be levied for inaccurate reporting of payroll.
s. 106(1): Paying assessments when due.	114: Additional percentage of assessment levied for late payment.
	115: Employer liable for full cost of claim for non-payment of assessment.
s. 121(1): Reporting accidents promptly.	121(1),(3): Employer to report accident within 3 days.

DECISION REVIEW BRANCH DECENTRALIZES

In keeping with the decentralized and integrated service approach undertaken by the WCB over the last two years, the decision review and access-to-file functions of the Board were transferred to the regional offices and the Integrated Service Units, effective March 1, 1989.

The decision review function is the first level of the internal appeal process provided by the WCB to employers and workers who object to adverse decisions made by the Board's operating areas. A decision review involves close scrutiny by a Decision Review Specialist of all the paperwork (forms, letters, reports) in a claim file and those additional materials submitted to

support the objection. The Decision Review Specialist may, upon review of all the paperwork, support or reverse the operating area's decision. The file access service, which is closely linked with the objection process, provides claim file documents according to rules set out in section 77 of the Workers' Compensation Act.

If there is objection to the decision made by the Decision Review Specialist, a formal hearing - the final level of appeal within the WCB - may be requested by either the worker or the employer. Hearings Officers, who convene these sessions, will continue to be based at the Board's Toronto head office, and travel throughout the province as required.

The transfer of these services to the units and regional offices will:

- significantly reduce the flow of files within the organization by eliminating file movement between head office and the regions,
- make claim files more accessible to adjudicators and other staff, and
- fully integrate all aspects of the Board's paper review function.

Furthermore, the knowledge and expertise of the Decision Review Specialists is expected to significantly benefit staff in the operating areas.

OUT-OF-PROVINCE HEALTH CARE

Commitment to Injured Workers Confirmed

Out-of-province health care is provided to workers who are involved in accidents or have flare-ups of old injuries while they are travelling or working outside the province and, subsequently, are treated there. In some cases, workers who are employed in remote areas within Ontario are taken, when in need of treatment, to the nearest facility, across one of the provincial boundaries. Provision of health care services is also made to workers who no longer live in Ontario or work for Ontario employers, but who are eligible for care as a result of an accident which occurred, or an industrial disease acquired, while living in the province.

In 1987, over 33,000 health care services were provided to injured workers, who had entitlement under the Ontario Workers' Compensation Act, while they were outside the province of Ontario. In terms of the total cost of health care for the Workers' Compensation Board that year (\$170 million), the out-of-province expenses amounted to \$2.2 million or 1.29%.

HEALTH CARE SERVICES

When an injured worker receives health care, the WCB is billed for all components of the service. On this basis, one trip to the hospital may result in fees for examination by the attending physician, blood transfusions, x-rays, urine and blood analysis, etc.

In 1988, the Policy and Program Development Department undertook a review of the Board's position on providing health care to Ontario workers outside the province. The evaluation included a review of the legislative authority

(section 52(1)(a)), the definition of **health care** (section 52(2)), and the circumstances under which care is provided to resident and non-resident workers.

LEGISLATIVE AUTHORITY

Workers who are entitled to compensation are entitled, pursuant to section 52(1)(a) of the Workers' Compensation Act, "...to such health care as may be necessary as a result of the injury;..."

DEFINITION - HEALTH CARE

Health care means

- * medical, surgical, optometrical and dental aid,
- * the aid of drugless practitioners under the Drugless Practitioners Act,
- * the aid of chiropodists under the Chiropody Act,
- * hospital and skilled nursing services,
- * such artificial members and such appliances or apparatus as may be necessary as a result of the injury and the replacement or repair thereof when deemed necessary by the Board.

Special consideration was given to the question of controls to ensure that the health care received in other provinces and countries represents quality care, and that the fees charged for the care are appropriate.

Finally, an underlying principle, which ran through the review, was to encourage the development of health care services in Ontario.

On November 3, 1988, a new policy was approved confirming the WCB's commitment to the provision of **necessary** out-of-province health care; defining Emergency Health Care; and providing guidelines for administering the policy.

POLICY STATEMENT

When health care outside of Ontario is necessary as a result of an injury or industrial disease, such care will be provided and paid for at a rate that the Board determines is proper and reasonable.



Resident and Non-Resident Workers

The new policy guidelines cover resident and non-resident injured workers. The latter group represents workers who reside in another province or country but who are eligible for health care:

- 1) by reason of a work related accident or industrial disease which occurred while they were residents in Ontario, or
- 2) because they work for Ontario employers.

Emergency Health Care

Health care is divided into two categories: 1) emergency care and 2) non-critical care received after the emergency has passed (which may include elective surgery and/or treatment.)

In defining **emergency health care**, the policy refers to such terms as "initial" and "critical periods."

DEFINITION - EMERGENCY HEALTH CARE

"Emergency health care" means the initial health care that is required following an accident or a recurrence of an injury or industrial disease. Emergency health care generally addresses a critical period of the disability and ends when:

- a) the worker is able to safely return to an Ontario health care facility or professional for further treatment, or
- b) the worker is able to return to work, or
- c) the worker is fully recovered whichever is sooner.

On this basis, it can be determined when an emergency exists, and when it is over. Of primary concern is the ultimate return of Ontario residents to the province, to family and friends, where their best interests can be assured.

Pre-authorization of Treatment

Emergency treatment does not require pre-authorization by the WCB. However, all health care services sought outside the province which do not fall into the emergency category must be pre-authorized by the Board or the costs may not be fully covered.

Quality Assurance and Appropriate Fees

The administrative guidelines stipulate that out-of-province physicians and hospitals, if they wish to be paid for their services, must be licensed and approved by the relevant government or licensing authority. Furthermore, the individuals or agencies must provide the WCB with periodic treatment reports.

The guidelines define appropriate fees for health care services. Examples of appropriate fees would be those that are equal to the Board's fee schedules for Ontario physicians; hospital rates equivalent to those set by the Ministry of Health; and fees that have been pre-authorized. Examples of inappropriate fees would be those which are in excess of the normal rates charged to the residents of the community, and certain fees for non-emergency services which have not been pre-authorized by the Board. In all cases, the appropriateness of the fees will be determined by the Board.

Copies of the policy statement, "Health Care Outside of Ontario" were mailed to manual holders in November '88. If you require a copy of this document, please call Usha Kapoor at (416) 927-4941.

EXECUTIVE APPOINTMENTS

Two executive appointments were recently made in the Policy and Specialized Services Division (P&SSD). Effective January 9, 1989, Irwin Glasberg was appointed Executive Director of the Policy and Program Development Department. On December 15, 1988, Paul Holyoke assumed the position of Acting Director, Operational Policy Branch.

Irwin Glasberg, upon joining the Workers' Compensation Board in 1985, held the position of Executive Assistant to the Chairman for one year. Subsequently, he became the Board's General Counsel and Acting Executive Director of the Strategic Policy and Analysis Department. More recently, he was appointed Executive Director of the Review Services Department which oversees the Board's internal appeals system.

Following his legal studies, and before joining the Board, Mr. Glasberg held a variety of positions with the Ministry of Labour - most recently that of Director of Appeals for the Occupational Health and Safety Division.

Paul Holyoke, a graduate of the University of Toronto Law School, completed post-graduate studies at the London School of Economics and joined the WCB in 1987. Initially, as a Policy Analyst in the Operational Policy Branch, Mr. Holyoke was involved in the development of a wide range of WCB policy initiatives including the Board's study and subsequent interim policy on chronic pain disorder.

In late 1987, he was appointed Executive Assistant to Dr. Elizabeth Kaegi, Vice-President, Policy and Specialized Services Division. In this position, Mr. Holyoke was afforded the opportunity of viewing the Board's operations from a broader perspective, in particular the areas of health and safety and vocational rehabilitation, and was involved in the development of the medical and vocational rehabilitation strategies.

Both Mr. Glasberg and Mr. Holyoke have expressed their personal commitments to the consultative process for the development of Board policies.

SURVIVORS' BENEFITS INCREASED FOR 1989

In recognition of increased costs, the Workers Compensation Board approved an increase in funeral benefits effective January 1, 1989. The policy now provides up to \$5,000 for necessary burial or cremation expenses, and is intended to help alleviate the financial burden experienced by bereaved families when a worker dies as a result of a compensable injury.

The new policy formalizes a long-term Board practice of paying additional expenses where the body of a worker must be transported a considerable distance from the place of death to the usual place of residence (or the residence of the immediate family).

This revised policy replaces the previous policy which allowed a

maximum \$2,500 for cremation or burial, with the possible addition of \$500 for special expenses incurred in a case of severe disfigurement.

The Occupational Disease Department will review the maximum funeral benefits award annually, to ensure that it keeps pace with general increases in funeral expenses.

WCB survivors' benefits, which are indexed annually, include both a once-only lump sum payment, and a monthly benefit, as outlined in the following chart.

Summary of Survivors' Benefits

	LUMP SUM PAYMENT	MONTHLY PAYMENT
SPOUSE WITH NO CHILDREN	<p>\$46,156.57 (base amount) Add \$1,153.92 for each year spouse is under 40 years of age,</p> <p style="text-align: center;">OR</p> <p>subtract \$1,153.92 for each year spouse is over 40 years of age.</p> <p>Minimum = \$23,078.28 Maximum = \$69,234.85</p>	<p>40% of worker's net average earnings* at time of death. Add 1% of worker's net average earnings for each year spouse is over 40 years of age,</p> <p style="text-align: center;">OR</p> <p>subtract 1% for each year spouse is under 40 years of age.</p> <p>Minimum payable = 20% Maximum payable = 60%</p>
SPOUSE WITH CHILD(REN)	As above.	90% of worker's net average earnings at time of death, until youngest child reaches 19 years of age.**
DEPENDANT CHILD(REN) BUT NO SPOUSE	\$46,156.57 in total whether one or more children.	One child receives 30% of worker's net average earnings at time of death. Add 10% for each additional child to a maximum of 90% of worker's net average earnings. Children have entitlement until age 19.***

* Net average earnings are calculated by taking the worker's average earnings and deducting the probable:

- income tax payable by the worker,
- Canada Pension Plan premiums payable by the worker, and
- unemployment insurance premiums payable by the worker.

Also, any survivor's benefits received under the Canada Pension Plan will be deducted from the average earnings.

**If the Board is satisfied that it is advisable for a child, or children, over the age of 19 to continue school, an additional 10% of the net average earnings will be added to the spousal periodic payment for each child concerned.

In such a case, the total award for the spouse and children will not exceed 90% of the net average earnings of the worker at the time of death.

*** Compensation is paid to an invalid child without regard to age, until the child ceases to be an invalid.

The WCB Bilingual Lexicon is Available to the Public!

It is now possible to purchase the Bilingual Lexicon of the Workers' Compensation Board. This lexicon contains approximately 1,800 terms and their equivalents drawn from Board operations. As these terms are not usually found in general bilingual dictionaries, the WCB Bilingual Lexicon is definitely a useful reference tool.

If you would like a copy of the Lexicon, please send your prepayment by cheque or money order in the amount of \$20.00, payable to:

Workers' Compensation Board

Account: 4711-62901

Address:

Workers' Compensation Board
Training & Information Branch
22nd floor, 2 Bloor St. East
Toronto, Ontario
M4W 3C3

Attn: Usha Kapoor
Phone: (416) 927-4941

Please allow 3 to 4 weeks for delivery.

Le Lexique bilingue de la CAT est maintenant disponible!

On peut à présent se procurer le Lexique bilingue de la Commission des accidents du travail. Ce lexique contient environ 1 800 termes, avec leurs équivalents, qui sont employés par divers secteurs de la Commission. Comme on ne trouve pas nécessairement ces termes dans des dictionnaires bilingues généraux, le Lexique bilingue de la CAT est un outil de référence indispensable.

Si vous désirez un exemplaire de ce lexique, veuillez envoyer un paiement anticipé de 20,00 \$, par chèque ou mandat payable à l'ordre de :

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Compte : 4711-62901

Adresse :

Commission des accidents
du travail

Direction de la formation et
de l'information

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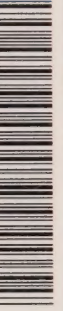
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POLICY UNDER REVIEW

Chronic Occupational Stress:

Review of scientific and legal issues. Discussion paper circulated early February for wide consultation to external stakeholders. Responses to be returned by mid-March.

Second Injury and Enhancement Fund:

Review of the scope, purpose and use of the Fund and its relationship to the Board's experience rating programs.

Section 40:

Review of the Board's policies regarding suitable and available work as well as the issue of cooperation in medical or vocational rehabilitation programs.

Worker vs. Independent Operator:

Review of the legal and policy issues respecting the categorization of individuals as workers or independent operators.

The Meaning of Disablement and Occupational Disease:

Review designed to determine the demarcation between these two conditions.

In each edition this column will describe key issues under review. This is not an exhaustive list.
